



Queensland Parliamentary Library

Drugs Misuse Amendment Bill 2007 (Qld)

*This Research Brief seeks to provide an overview of the provisions and operation of the Drugs Misuse Act 1986 (Qld) and the Drugs Misuse Regulation 1987 (Qld) in the context of amendments proposed by the **Drugs Misuse Amendment Bill 2007 (Qld)**, introduced into the Queensland Legislative Assembly on 14 November 2007. The main objectives of the new laws include reclassifying the drugs commonly known as 'ecstasy' and 'death' as 'Schedule 1 dangerous drugs', which will increase the severity of penalties for offences involving those drugs, and rescheduling drugs currently contained in Schedule 2A of the Regulation (mainly anabolic and androgenic steroidal agents) into Schedule 2 which will also mean that stricter sanctions will apply to offences involving those substances. Provisions creating a regime for regulating transactions involving the supply of precursor drugs or things will also be tightened.*

Prior to outlining the changes sought to be implemented by the Bill, the Brief will examine some recent trends regarding illicit drug use in Queensland and throughout Australia.

Nicolee Dixon

Research Brief No 2008/03

**Queensland Parliamentary Library
General Distribution Research Team
Research and Information Service**

Ms Karen Sampford, Team Leader	(07) 3406 7116
Mrs Nicolee Dixon, Senior Parliamentary Research Officer	(07) 3406 7409
Ms Renee Gastaldon, Parliamentary Research Officer	(07) 3406 7241
Ms Mary Westcott, Parliamentary Research Officer	(07) 3406 7372
Mrs Xanthe Paltridge, Parliamentary Research Officer	(07) 3406 7468

Research Publications are compiled for Members of the Queensland Parliament, for use in parliamentary debates and for related parliamentary purposes. Information in publications is current to the date of publication. Information on legislation, case law or legal policy issues does not constitute legal advice.

Research Publications on Bills reflect the legislation as introduced and should not be considered complete guides to the legislation. To determine whether a Bill has been enacted, or whether amendments have been made to a Bill during consideration in detail, the Queensland Legislation Annotations, prepared by the Office of the Queensland Parliamentary Counsel, or the Bills Update, produced by the Table Office of the Queensland Parliament, should be consulted. Readers should also refer to the relevant Alert Digest of the Scrutiny of Legislation Committee of the Queensland Parliament at: www.parliament.qld.gov.au/SLC

© Queensland Parliamentary Library, 2008

ISSN 1443-7902

ISBN 978-1-921056-60-4

FEBRUARY 2008

Copyright protects this publication. Except for purposes permitted by the Copyright Act 1968, reproduction by whatever means is prohibited, other than by Members of the Queensland Parliament in the course of their official duties, without the prior written permission of the Clerk of the Parliament on behalf of the Parliament of Queensland.

Inquiries should be addressed to:
Team Leader, General Distribution Research Team
Research and Information Service
Queensland Parliamentary Library
Parliament House
George Street, Brisbane QLD 4000
Ms Karen Sampford. (Tel: 07 3406 7116)
Email: Karen.Sampford@parliament.qld.gov.au

Information about Research Publications can be found on the Internet at:
www.parliament.qld.gov.au/publications

CONTENTS

EXECUTIVE SUMMARY
1 INTRODUCTION.....	1
2 BACKGROUND.....	1
2.1 ILLICIT DRUG USE IN QUEENSLAND: A SURVEY OF HOUSEHOLDS 2002-05	2
2.2 STATISTICS ON DRUG USE IN AUSTRALIA 2006.....	4
2.3 TREATMENT FOR DRUG USE	5
3 OVERVIEW OF QUEENSLAND'S DRUGS MISUSE LEGISLATION AND PROPOSED AMENDMENTS.....	6
3.1 DANGEROUS DRUGS	6
3.1.1 'Schedule 1 Dangerous Drugs'	7
3.1.2 Schedule 2 and 2A Dangerous Drugs	10
3.1.3 Specified Quantities – Schedules 3 and 4.....	12
3.1.4 Certain Prescription Drugs – Schedule 5.....	13
3.1.5 Controlled Substances (Schedule 6) and Controlled Things (Schedule 8B)	13
3.2 OFFENCES.....	16
3.3 DEFENCE OF SUPPLY OF A SMALL QUANTITY OF PRESCRIBED DRUG	19
3.4 OTHER	20
RECENT QPL RESEARCH PUBLICATIONS 2008	21

EXECUTIVE SUMMARY

This Research Brief seeks to provide an overview of the provisions and operation of the *Drugs Misuse Act 1986* (Qld) and the *Drugs Misuse Regulation 1987* (Qld) in the context of amendments proposed by the **Drugs Misuse Amendment Bill 2007 (Qld)** (the DMA Bill) introduced into the Queensland Legislative Assembly on 14 November 2007.

Prior to outlining the changes sought to be implemented by the Bill, the Brief will examine some **recent trends** regarding drug use in Queensland and throughout the nation as a whole. Firstly, statistics are provided from the February 2007 Queensland Crime and Misconduct Commission's *Illicit drug use in Queensland: a survey of households 2002-05*, concerning the prevalence of illicit drug use by Queenslanders (**pages 1-4**). Secondly, a broader perspective is given by the Australian Institute of Health and Welfare's Report, *Statistics on Drug Use in Australia 2006*, which summarises the major drug use statistical collections in Australia in relation to Australians' use of licit and illicit drugs, and considers the impact of drugs on health and crime (**pages 4-5**). Some information about drug treatments is set out on **pages 5-6**.

The Research Brief then turns to an examination of the provisions of the *Drugs Misuse Act 1986* (Qld) and the *Drugs Misuse Regulation 1987* (Qld). Firstly, it briefly considers the different types of '**dangerous drugs**' as designated by the schedules of the *Drugs Misuse Regulation 1987*. A discussion is then provided about the DMA Bill's intended expansion of the definition of a 'dangerous drug'. It then considers the proposed reclassification of Methylenedioxymethamphetamine (MDMA or Ecstasy) and Paramethoxyamphetamine (PMA or 'death') as 'Schedule 1 dangerous drugs' in order to attract the severest penalties for offences involving these drugs. The Brief also looks at the proposed abolition of the distinction between Schedule 2 and 2A dangerous drugs, with drugs from Schedule 2A to be subsumed within Schedule 2, thereby ensuring that tougher penalties apply for offences involving those drugs (**pages 6-14**).

A short overview is also provided about intended changes to **Part 5A** of the *Drugs Misuse Act 1986* and to the relevant provisions in the *Drugs Misuse Regulation 1987* regarding **information requirements** about transactions relating to the supply of precursor drugs or things (**pages 14-15**).

The various **offences** involving drugs are then discussed on **pages 16-19**, including the new offences sought to be added by the DMA Bill regarding the **supply** of a relevant substance or thing and **producing** a relevant substance or thing with the intention that it later be used in producing a dangerous drug.

Finally, the Brief considers amendments proposed to be made to s 124 of the *Drugs Misuse Act 1986* to ensure that the **defence** to a charge of supplying a dangerous drug can only be used for a true one-off supply of a small dose of prescription medication to another person with the same condition (**pages 19-20**).

1 INTRODUCTION

This Research Brief seeks to provide an overview of the provisions and operation of the *Drugs Misuse Act 1986 (Qld)* (DMA) and the *Drugs Misuse Regulation 1987 (Qld)* (DM Regulation) in the context of amendments proposed by the *Drugs Misuse Amendment Bill 2007 (Qld)*, introduced into the Queensland Legislative Assembly on 14 November 2007 by the Queensland Attorney-General, the Hon Kerry Shine MP.¹ The main objectives of the new laws include reclassifying the drugs commonly known as ‘ecstasy’ and ‘death’ as ‘Schedule 1 dangerous drugs’, which will increase the severity of penalties for offences involving those drugs, and rescheduling drugs currently contained in Schedule 2A of the DM Regulation (mainly anabolic and androgenic steroidal agents) into Schedule 2 which will also mean that stricter sanctions will apply to offences involving those substances. Provisions creating a regime for regulating transactions involving the supply of precursor drugs or things will also be tightened as will the defence regarding one-off supplies of small doses of prescription medication.

Prior to outlining the changes sought to be implemented by the Bill, the Brief will examine some recent trends regarding illicit drug use in Queensland and throughout Australia.

2 BACKGROUND

The use, production, and supply of illicit drugs raise significant issues in Queensland and elsewhere. Illicit drugs pose threats to physical and psychological health and add to Australia’s social and health costs. Illicit drug use is often linked with other crimes such as robbery and assault, and a range of social problems such as family breakdown.²

In Queensland, the main pieces of legislation regulating the manufacture, possession, distribution, use, and advertising of drugs – legal and illegal – include the [*Drugs Misuse Act 1986 \(Qld\)*](#), the [*Drugs Misuse Regulation 1987 \(Qld\)*](#), the [*Queensland Criminal Code*](#), and the [*Health \(Drugs and Poisons\) Regulation 1996*](#)

¹ The Hon Kerry Shine MP is also the Minister for Justice and Minister Assisting the Premier in Western Queensland.

² Queensland Crime and Misconduct Commission (CMC), *Illicit drug use in Queensland: a survey of households 2002-05*, February 2007, Brisbane, <http://www.cmc.qld.gov.au/data/portal/00000005/content/87421001161922260587.pdf>, citing other research including that by the Australian Institute of Criminology and the Commonwealth Department of Health and Ageing.

(Qld). The Commonwealth Government's [Customs Act 1901](#) concerns trafficking, importation and exportation of drugs.

The Australian Crime Commission (ACC), a Commonwealth body established to counter serious and organised crime in cooperation with other crime agencies, reported that over 6 tonnes of illicit drugs were seized by Australian law enforcement bodies during 2005-06, including over 4,000 kilograms of cannabis and over 1,000 kilograms of amphetamine-type stimulants. Over 78,500 people were arrested for drug offences during that period.³ It was found that amphetamine-type stimulant arrests continued to increase and accounted for 15% of all drug arrests across the nation, second only to marijuana/cannabis arrests (70% of drug arrests). Cannabis is the most commonly used illicit drug in Australia.⁴

2.1 ILLICIT DRUG USE IN QUEENSLAND: A SURVEY OF HOUSEHOLDS 2002-05

In February 2007, the Queensland Crime and Misconduct Commission (CMC) published [Illicit drug use in Queensland: a survey of households 2002-05](#), representing the key findings from population-level telephone surveys of over 13,000 randomly selected adult Queenslanders each year from 2002 to 2005.⁵ The highlights of the survey results include –

- cannabis was the most commonly reported illicit drug to have been used at least once in a respondent's lifetime (an average of around 30%) in all surveys between 2002 and 2005. Around 6% had used amphetamines; around 4% had used ecstasy and around 1% had used heroin. Other drugs reported were sleeping pills/tranquillisers for non-medical purposes (2.4%) and hallucinogens (5%). Over time (between 2002 and 2005) there was a slight decrease in cannabis use but there was a 1% increase in the use of ecstasy between 2002 and 2005;

³ Australian Crime Commission (ACC), *Illicit Drug Data Report 2005-06*, http://www.crimecommission.gov.au/content/publications/iddr_2005_06/IDDR_2005-06.pdf, and *Illicit Drugs Data Report Snapshot*, http://www.crimecommission.gov.au/content/publications/iddr_2005_06/IDDR_05-06-Snapshot.pdf.

⁴ ACC, *Illicit Drug Data Report 2005-06*, p 7.

⁵ CMC, *Illicit drug use in Queensland: a survey of households 2002-05*, p 2. Some limitations on the results were noted (p 1). These include underestimation of the true level of drug activities due to factors such as the effects of drug use on the memory of participants; reticence about speaking to strangers about drug use and illegal activities; and differences in data collection methods.

- while the general profile of illicit drugs use is consistent with findings of other studies, the overall prevalence of Queenslanders' illicit drug use was slightly less than reported elsewhere (but this could reflect different research methods);⁶
- while the survey data had many limitations and it was only possible to assess the links between illicit drug use and basic socio-demographic factors that may influence use, it was found that being male, young, never having married, being unemployed or being a student, and having ever been arrested for an offence were all risk factors for drug taking.⁷ More males (around 37%) than females (around 24%) reported using any illicit drugs targeted by the survey and use was highest amongst those aged 25-34.⁸ It also appeared that, in terms of marital status, participants who had never married had the highest prevalence rates of use (e.g. 46.7% prevalence of use of cannabis compared with 22.7% of married participants).⁹ Drug use – particularly cannabis and amphetamine use – was higher among unemployed participants (44.4% and 11.2% for each drug, respectively).¹⁰ In terms of criminal history, 7.5% of participants in the 2005 survey had been arrested and, among these, 26.3% had been arrested for involvement in illegal drugs.¹¹

Consistently with other studies,¹² it was found that over 80% of respondents thought that monthly or weekly use of amphetamines, ecstasy, heroin or hallucinogens posed great risks to health. However, for cannabis use, only 39.8% thought that monthly use was harmful and 60.1% thought weekly cannabis use was harmful.¹³ However, between 2002 and 2005, there was an increase in the number

⁶ CMC, *Illicit drug use in Queensland: a survey of households 2002-05*, p 4.

⁷ CMC, *Illicit drug use in Queensland: a survey of households 2002-05*, pp 6-7. This was consistent with other research.

⁸ CMC, *Illicit drug use in Queensland: a survey of households 2002-05*, pp 6-8.

⁹ CMC, *Illicit drug use in Queensland: a survey of households 2002-05*, p 10.

¹⁰ CMC, *Illicit drug use in Queensland: a survey of households 2002-05*, p 11.

¹¹ CMC, *Illicit drug use in Queensland: a survey of households 2002-05*, p 11.

¹² Including the Australian Institute of Health and Welfare (AIHW) *2004 National Drug Strategy Household Survey: State and Territory Supplement*.

¹³ CMC, *Illicit drug use in Queensland: a survey of households 2002-05*, p 12.

of respondents thinking that monthly or weekly cannabis use posed risks to health.¹⁴

2.2 STATISTICS ON DRUG USE IN AUSTRALIA 2006

In April 2007, the Australian Institute of Health and Welfare (AIHW) published the Report, *Statistics on Drug Use in Australia 2006*.¹⁵ The report summarises the major drug use statistical collections in Australia in relation to tobacco, alcohol, illicit drugs and pharmaceuticals and considers the impact of drugs on health and crime.¹⁶ A large part of the data was taken from the *2004 National Drug Strategy Household Survey* managed by the AIHW (a comprehensive survey of around 30,000 Australians aged 12 and over).¹⁷ The survey findings about Australians aged 14 years and over include –¹⁸

- in 2004, 38% had used an illicit drug in their lifetime and 15% had done so in the 12 months leading up to being surveyed;
- marijuana/cannabis was the most common illicit drug used – used by 34% during their lifetime;
- in 2004, 9% had used methamphetamine in their lifetime and 3% during the previous 12 months;
- in 2005, 234 prescription medications were dispensed with the main medications, in terms of cost to the Commonwealth Government, frequency of dispensing, and prescribed daily dosage, being blood cholesterol medications;
- in 2003, around 2% of the disease burden was attributable to the use of illicit drugs and, in 2005, 46% of injecting drug users had overdosed at some point in their lifetime;
- several negative birth outcomes were associated with use by pregnant women of opioids, stimulants or cannabis. One such adverse outcome was a higher percentage of low birth weight babies to such women;

¹⁴ CMC, *Illicit drug use in Queensland: a survey of households 2002-05*, p 13.

¹⁵ AIHW, *Statistics on Drug Use in Australia 2006*, Drug Statistics Series No 18, April 2007, Canberra, <http://www.aihw.gov.au/publications/phe/soduia06/soduia06.pdf>.

¹⁶ The Report focuses on various population groups such as youth, Indigenous persons, prisoners, pregnant women, and employees.

¹⁷ AIHW, *Statistics on Drug Use in Australia 2006*, p 2.

¹⁸ AIHW, *Statistics on Drug Use in Australia 2006*, Key Points, pp viii-ix. There will be no discussion here about alcohol and tobacco use.

- alcohol was the most common principal drug of concern in treatment episodes in 2004-05 (37%), followed by marijuana/cannabis (23%), and heroin (17%). As of 30 June 2005, there were 39,000 people receiving pharmacotherapy treatment (72% on methadone maintenance);

The AIHW Report found that, since 1996-97, total consumption related illicit drug arrests have fallen as have those relating to supply.¹⁹

2.3 TREATMENT FOR DRUG USE

The AIHW has implemented the Alcohol and Other Drug Treatment Services National Minimum Data Set (AODTS-NMDS)²⁰ to assist in monitoring and evaluating key objectives of the *National Drug Strategy 2004-2009*. The [*Alcohol and other drug treatment services in Australia 2005-06 Bulletin*](#) (the AIHW 2005-2006 Bulletin) is the sixth in a series of annual bulletins on the AODTS-NMDS, derived from the AODTS-NMDS Annual Report 2005-06.²¹

The AIHW 2005-2006 Bulletin commented that there is a diverse range of drug treatment services in Australia and not all of them were included in the data collection. The analysis in the Bulletin is based on periods of contact between a client and agency with a defined start and end date (referred to as ‘closed treatment episodes’).²² A total of 644 government-funded alcohol and drug treatment agencies are covered, involving over 151,000 closed treatment episodes during 2005-06. The average age of clients was 31 years, with 32% aged 20-29 years. Most (66%) were male. The main drugs of concern reported by clients as being the

¹⁹ AIHW, *Statistics on Drug Use in Australia 2006*, p 14, referring to ACC, *Illicit Drug Data Report 2004-05*.

²⁰ The AODTS-NMDS is a nationally agreed set of common data items collected by government-funded service providers, collated by health authorities and compiled into a national data set by the AIHW. It provides information on the demographics of users of the services, drugs of concern nominated by users, the treatment received, and other relevant information.

²¹ AIHW, *Alcohol and other drug treatment services in Australia 2005-06*, Bulletin 52, July 2007, p 1, <http://www.aihw.gov.au/publications/index.cfm/title/10432>.

²² AIHW, *Alcohol and other drug treatment services in Australia 2005-06*, p 3 lists some caveats on the data collection, including the fact that the total number of treatments for Queensland may be undercounted due to the exclusion of a number of publicly funded non-government agencies.

drug that led them to seek treatment were alcohol (39%), cannabis (25%), opioids (17%, with heroin accounting for 14%) and amphetamines (11%).²³

3 OVERVIEW OF QUEENSLAND'S DRUGS MISUSE LEGISLATION AND PROPOSED AMENDMENTS

The [Drugs Misuse Act 1986 \(Qld\)](#) (DMA), in conjunction with the [Drugs Misuse Regulation 1987 \(Qld\)](#), (the DM Regulation) governs the misuse of certain drugs and sets out a range of offence provisions.

The main drug and related offences are established under Part 2 of the DMA. The severity of the penalties is based on the degree of dangerousness of the drug (which depends upon whether it is found in Schedule 1 (most dangerous), Schedule 2 (less dangerous), or Schedule 2A (anabolic and androgenic steroidal agents)) of the DM Regulation; the quantity of the drug involved (as specified in Schedules 3 and 4 of the DM Regulation); and the nature of the offence (e.g. use being treated less harshly than supplying or trafficking).²⁴

The [Drugs Misuse Amendment Bill 2007 \(Qld\)](#) (the DMA Bill), introduced into the Queensland Legislative Assembly on 14 November 2007 by the Queensland Attorney-General, the Hon Kerry Shine MP, aims to recognise the dynamic nature of the drug industry by expanding the definition of dangerous drugs, seeks to create new offences and increases maximum penalties for certain offences involving dangerous drugs. The DMA Bill also endeavours to assist law enforcement efforts by amendments to provisions dealing with transactions involving controlled substances and certain things.²⁵

3.1 DANGEROUS DRUGS

A **dangerous drug** is currently defined (in s 4 of the DMA) as –

(a) a thing, specified in the Drugs Misuse Regulation 1987 [Qld] [DM Regulation] Schedules 1, 2 or 2A or, where the thing is a plant, any part of the thing; and

²³ AIHW, *Alcohol and other drug treatment services in Australia 2005-06*, p 4. The AIHW warns that the AODTS–NMDS collection excludes agencies whose sole purpose is to prescribe and/or dose for methadone or other opioid pharmacotherapies. Therefore, the collection excludes many clients receiving treatment for opioid use.

²⁴ RG Kenny, *An Introduction to Criminal Law in Queensland and Western Australia*, Chapter 16, para 16.3.

²⁵ See Drugs Misuse Amendment Bill 2007 (Qld), *Explanatory Notes*, p 1.

(b) a thing being a salt, derivative or stereo-isomer of that thing or any salt of such a derivative or stereo-isomer;

and includes a thing referred to in paragraph (a) or (b) that is contained in a natural substance or in any preparation, solution or admixture.

The DMA Bill proposes to broaden the definition of ‘dangerous drug’ in s 4 to also include a thing that has a chemical structure that is substantially similar to the chemical structure of a thing referred to in paragraph (a) or (b) of the definition and that has a substantially similar pharmacological effect: **cl 4**. The *Explanatory Notes* to the DMA Bill (p 5) state that this amendment is aimed at underground chemists who make slight changes to the molecular structure of existing illicit drugs to create new drugs not falling within the definition of a dangerous drug.

3.1.1 ‘Schedule 1 Dangerous Drugs’

Schedule 1 of the DM Regulation contains the most serious/dangerous drugs. Offences in relation to these drugs carry the most severe penalties that can be imposed under the DMA.

Schedule 1 lists the following as dangerous drugs: amphetamine, cocaine, heroin, lysergide, methylamphetamine, and phencycline.

The AIHW 2005-2006 Bulletin indicates that amphetamines were the fourth most common principal drug of concern for which treatment was sought in 2005-06 (11% of all closed treatment episodes). The majority of clients were male with the average age being 28. The most common form of use was injecting (73% of episodes).²⁶

In 2001, the DM Regulation was amended to place amphetamine and methylamphetamine in Schedule 1. Following this, a government review was undertaken of the scheduling of dangerous drugs to determine if the current position properly indicated the dangerousness of the relevant drugs contained therein and whether the laws were keeping pace with the changing drug industry.²⁷ The review indicated that some areas of the law under the DMA and the DM Regulation were in need of change. It was considered that amending Schedule 1 – which contains the most seriously dangerous drugs – to include Paramethoxyamphetamine (PMA) and Methylenedioxymethamphetamine

²⁶ AIHW, *Alcohol and other drug treatment services in Australia 2005-06*, p 8.

²⁷ *Explanatory Notes*, p 1.

(MDMA) assists in ensuring that these potentially fatal drugs are properly dealt with.²⁸

The DMA Bill will add **Methylenedioxyamphetamine** (MDMA) commonly known as ‘ecstasy’ and **Paramethoxyamphetamine** (PMA) commonly known as ‘death’ to Schedule 1.²⁹ MDMA or ecstasy has often been termed a ‘party drug’ which gives it a social context belying the dangerous consequences that can be caused by using it.

Methylenedioxyamphetamine (MDMA) or Ecstasy

Amphetamines are synthetic psychostimulant drugs and speed up the workings of the brain. Legal amphetamines are manufactured by pharmaceutical companies and are available by prescription only for health issues such as attention deficit hyperactivity disorder (ADHD).³⁰ MDMA or ecstasy is a stimulant and hallucinogen, having an energising effect on the user. It is chemically related to amphetamine but MDMA is not a derivative and is produced by a different chemical process. MDMA is an oil which can be converted to powder to be used in tablets.³¹ Ecstasy is commonly produced illegally in underground laboratories.

Ecstasy distorts time and perception, induces feelings of emotional warmth and well-being and reduces anxiety. However, there are significant negative effects including depression, anxiousness, confusion, hallucinations, aggression, impulsiveness, panic attacks and paranoia.³² It can also elevate one’s blood pressure, raise body temperature and heart beat, and cause sudden sweating. Among other reported effects, users of the drug can suffer unsteadiness, nausea, vomiting, muscle aches, impaired motor skills, blurred vision and fatigue. The effects that can lead to death are heart attack, brain haemorrhage, blood clotting, kidney failure, overheating and drinking too much fluid.³³

²⁸ *Explanatory Notes*, p 2.

²⁹ See **cl 40** of the Drugs Misuse Amendment Bill 2007 (Qld).

³⁰ Better Health Channel, ‘Amphetamines’, *Factsheet*, 2007, <http://www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Amphetamines?open>.

³¹ ACC, *Illicit Drug Data Report 2005-06*, p 24.

³² Australian Drug Foundation (ADF), DrugInfo Clearinghouse, ‘Ecstasy’, <http://www.druginfo.adf.org.au/article.asp?ContentID=ecstasy>.

³³ ADF, ‘Ecstasy’.

The consequences are more severe for those with pre-existing medical conditions such as heart disease, diabetes, liver problems, mental illness and epilepsy.³⁴ Symptoms can be exacerbated by becoming overheated and dehydrated when dancing.

A major problem is that ecstasy is often made by ‘underground chemists’ who may substitute ingredients during its manufacture so there is no way of knowing how much MDMA is in the end product and what hygiene controls have been observed. If it is too strong, a person may overdose on a small amount.³⁵ Adding substances such as bicarbonate of soda, sugar and ephedrine has potentially lethal impacts.³⁶

It has been reported by the Australian Crime Commission, in the *Illicit Drug Data Report 2005-06*, that Western Europe remains the primary source of MDMA for the global market but there is large scale production in South East Asia – close to Australia. However, detections of MDMA at the Australian border fell significantly from 173 detections in 2004-05 to 135 in 2005-06. Only 14 of the 135 MDMA detections were more than 1 kg.³⁷ It was noted that MDMA trafficking syndicates are adaptive to law enforcement operations and continue to avoid detection by shipping MDMA in powder and liquid forms.³⁸

It appears, however, that Australia has the highest rate of MDMA consumption per capita in the world and it is the third highest illicit drug used by Australians.³⁹ In the wider community, MDMA use has increased from 1% in 1991 to 3% in 2004.⁴⁰ There has been a recent trend towards a greater level of domestic manufacture of MDMA, as evidenced by the detection of more clandestine laboratories in the past few years. In 2005-06, seven such laboratories were found in Australia, all in New South Wales.⁴¹

³⁴ ADF, DrugInfo Clearinghouse, ‘How Drugs Affect You: Ecstasy’, *Pamphlet*, September 2006.

³⁵ ADF, ‘How Drugs Affect You: Ecstasy’.

³⁶ ADF, DrugInfo Clearinghouse, ‘Amphetamines’ *Factsheet*, September 2006.

³⁷ ACC, *Illicit Drug Data Report 2005-06*, pp 25-26.

³⁸ ACC, *Illicit Drug Data Report 2005-06*, p 25.

³⁹ ACC, *Illicit Drug Data Report 2005-06*, p 27, citing other studies.

⁴⁰ ACC, *Illicit Drug Data Report 2005-06*, p 29, citing Australian Institute of Criminology (AIC), ‘Trends in illicit drug use in Australia’, *Crime Facts Info*, 26 April 2006, No 121, 2006, Canberra.

⁴¹ ACC, *Illicit Drug Data Report 2005-06*, p 27.

The ACC referred to research by the National Drug and Alcohol Research Centre in 2006 that most MDMA users believe that MDMA is very easy or easy to obtain in all jurisdictions.⁴²

The AIHW 2005-2006 Bulletin reported that, of those persons seeking treatment for drug use during 2005-06, 0.6% of closed treatment episodes involved ecstasy as the principal drug of concern. Male clients accounted for 75% of the treatments with the median age of clients being 21 years. Ingestion was the most common method of use and 62% of cases included at least one other drug of concern.⁴³

Paramethoxyamphetamine (PMA)

Paramethoxyamphetamine (PMA) is a powerful hallucinogenic stimulant that is cheaper and easier to manufacture than MDMA and is far more dangerous. It can increase heart rate, blood pressure, and body temperature to fatal levels. PMA is closely related to ecstasy and is a stimulant and hallucinogen.⁴⁴ It has been used illicitly in Australia since 1994 and has become popular at rave parties in the USA. Like ecstasy, it can also have harmful consequences both emotionally and physically and it began to raise concerns when a series of fatalities occurred in Australia where it was marketed as ecstasy.⁴⁵ PMA continues to be found in pills being sold as ecstasy.

The *Explanatory Notes* (p 2) to the DMA Bill state that because PMA has the potential to kill and can be used as an ingredient in ecstasy, it too will be elevated to a Schedule 1 dangerous drug to deter use.

3.1.2 Schedule 2 and 2A Dangerous Drugs

Schedule 2 contains a list of 'dangerous drugs' which are less dangerous than those listed in Schedule 1. Some of these are lawful to use or possess if they have been obtained under a prescription and used for the purpose prescribed. Examples are methadone, morphine and pethidine.

⁴² ACC, *Illicit Drug Data Report 2005-06*, p 29, citing National Drug and Alcohol Research Centre, Preliminary findings from the Ecstasy and Related Drugs Reporting System, 2006.

⁴³ AIHW, *Alcohol and other drug treatment services in Australia 2005-06*, p 9.

⁴⁴ Division of Epidemiology, Services and Prevention Research, USA National Institute on Drug Abuse (NIDA), *Epidemiologic Trends in Drug Abuse*, June 2001, p 4.

⁴⁵ R Gough, SZ Imanm, B Blough, W Slikker, SF Ali, National Center for Toxicological Research/Federal Drugs Administration (USA), 'MDMA/Ecstasy Research: Advances, Challenges, Future Directions – A Scientific Conference', NIDA (USA), 19-20 July 2001.

The DMA Bill proposes to replace Schedule 2 with a new Schedule 2 and to include 36 benzodiazepines, making them ‘dangerous drugs’: cl 41. Examples of the benzodiazepines to be included are those commonly known as Valium and Serapax. These have found their way onto the illicit drug market and it is proposed to make it unlawful to possess, supply, produce or traffick in these drugs. However, possession and use authorised by prescription will still be lawful.⁴⁶

Schedule 2A was inserted into the DM Regulation in 2000 by the *Drugs Misuse Amendment Act 2000* when the misuse of performance enhancing drugs became an issue in the lead up to the 2000 Sydney Olympic Games.⁴⁷ Schedule 2A covers anabolic and androgenic steroidal agents. While these drugs were, prior to the 2000 amendments, dealt with by the *Health (Drugs and Poisons) Regulation 1996*, the maximum penalty that applied was a \$4,500 fine (i.e. there was no custodial sanction).⁴⁸ At the same time, the Queensland Office of the Director of Public Prosecutions and the Department of Justice and Attorney-General were concerned about the limited penalties and offences available for the misuse of flunitrazepam (Rohyphnol)⁴⁹ and ephedrine.⁵⁰ Upon the introduction of Schedule 2A, most types of offences in relation to Schedule 2A drugs attracted a penalty of up to 5 years imprisonment and 2 years imprisonment applied to possession. Sanctions involving Schedule 2A drugs are less severe than those involving Schedule 2 drugs.

The *Explanatory Notes* to the DMA Bill (p 6) indicate that there is no longer a basis for distinguishing between Schedule 2 and Schedule 2A drugs. This is because of the nature of the substances in Schedule 2A, the fact that many can cause harm when used otherwise than under prescription, and the fact that the level of criminal activity involved in supplying and trafficking in these substances does not differ from that involved in offences relating to Schedule 2 drugs. The ACC reports that the Australian Customs Service detected 1,087 anabolic agents and

⁴⁶ *Explanatory Notes*, pp 2-3.

⁴⁷ For the background to these amendments, see K Sampford, ‘Drugs Misuse Amendment Bill 2000’, *Legislation Brief 8/00*, Queensland Parliamentary Library, June 2000, <http://www.parliament.qld.gov.au/view/publications/documents/research/legislationBriefs/2000/lbr0800ks.pdf>.

⁴⁸ Hon TA Barton MP, Minister for Police and Corrective Services, Drugs Misuse Amendment Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 17 May 2000, pp 1082-1083, p 1082.

⁴⁹ Commonly known as the ‘date rape drug’.

⁵⁰ Hon TA Barton MP, Second Reading Speech, p 1082. For a description of these drugs, see K Sampford, ‘Drugs Misuse Amendment Bill 2000’.

other selected hormones at the Australian border during 2005-2006, a marginal increase from the previous year. The significant majority of detections of anabolic agents and steroids involved small amounts imported for personal use and small scale trafficking – mainly in sports.⁵¹ There was also an increase in the weight and number of domestic steroid seizures from 2004-05 (around 55 seizures and around 3,600 grams seized) to 2005-06 (around 79 seizures and around 5,800 grams seized).⁵²

The DMA Bill will also seek to include within the replaced **Schedule 2** those substances currently found in Schedule 2A of the DM Regulation and **cl 42** will repeal Schedule 2A. One effect of the rescheduling of Schedule 2A drugs into Schedule 2 is that the maximum penalties for offences involving those drugs will increase considerably. For instance, possession of a Schedule 2A drug currently attracts a penalty of up to 2 years imprisonment whereas possession of a Schedule 2 drug attracts up to 15 years imprisonment. The amendments effected by the DMA Bill will mean that possession of drugs rescheduled from Schedule 2A to Schedule 2 makes an offender liable to up to 15 years imprisonment.

As a consequence of the repeal of Schedule 2A, the DMA Bill proposes to amend a number of other provisions of the DMA to omit references to that schedule. For example, authorised health officers (i.e. officers authorised in writing under the *Health Act 1937*) will no longer be involved in enforcing provisions of the DMA regarding unlawful possession of a Schedule 2A drug and, consequently, provisions in Part 3 the DMA relating to authorised officers will be omitted by **cl 17**.

3.1.3 Specified Quantities – Schedules 3 and 4

Schedules 3 and 4 of the DM Regulation list the quantities of particular dangerous drugs at or above which relevant penalties apply. For instance, possession of 200 or more grams of cocaine (a Schedule 1 dangerous drug), is punishable by up to 25 years in prison (pursuant to s 9 of the DMA (see below)).⁵³

⁵¹ ACC, *Illicit Drug Data Report 2005-06*, pp 64-65.

⁵² ACC, *Illicit Drug Data Report 2005-06*, p 65 and interpretation of Figure 26.

⁵³ Minor amendments are sought to be made to the authorising sections of both Schedules by **cls 43** and **44** of the Drugs Misuse Amendment Bill 2007 (Qld).

3.1.4 Certain Prescription Drugs – Schedule 5

Schedule 5 of the DM Regulation lists some prescription drugs that are set out in Schedule 2. Those listed in Schedule 5 are drugs which are considered to be legitimately used for pain relief (e.g. morphine and codeine), have anaesthetic properties (such as ketamine), or are used to treat drug addiction.⁵⁴

Clause 45 of the DMA Bill seeks to replace the current Schedule 5 of the DM Regulation to improve the definition of drugs to which s 124 of the DMA can apply. Section 124, as will be discussed later in this Brief, is a defence to a charge of supplying a dangerous drug. The new Schedule 5 will include the 36 benzodiazepines that the DMA Bill will add to Schedule 2 of the DM Regulation and these include drugs such as Valium and Serapax. The intention is to assist persons in being able to rely on the defence in s 124 (see below).⁵⁵ The new version of Schedule 5 will exclude some of the existing drugs such as methadone, pethidine and morphine which are substances that have potential for abuse, misuse and physical or psychological dependence. This means that the defence in s 124 will not be available for supplying or possessing those drugs.⁵⁶

3.1.5 Controlled Substances (Schedule 6) and Controlled Things (Schedule 8B)

The definition of ‘controlled substance’ in s 4 of the DMA refers to a substance specified in **Schedule 6** of the DM Regulation; a salt, derivative or stereo-isomer of such a substance; or a salt of a derivative or stereo-isomer of such a substance. The substance is not a controlled substance when it is compounded with other substances not included in Schedule 6. These substances and other things can possibly be used to manufacture illicit dangerous drugs. For instance, a person may extract pseudoephedrine from a cold and flu tablet and sell it to another person who then uses it to make methamphetamine.⁵⁷

Pursuant to a proposed amendment to **s 43A** of the DMA, a ‘controlled thing’ is a thing specified in **Schedule 8B** of the DM Regulation.⁵⁸ Schedule 8B includes the following things: condenser, distillation head, heating mantle, manual or

⁵⁴ See *Explanatory Notes*, p 4.

⁵⁵ *Explanatory Notes*, p 13.

⁵⁶ *Explanatory Notes* p 12.

⁵⁷ *Explanatory Notes*, p 4.

⁵⁸ See **cl 19** of the Drugs Misuse Amendment Bill 2007 (Qld).

mechanical pill press, rotary evaporator, reaction vessel, splash head. As will be seen later, various offences established under s 9A and proposed new ss 9B and 9C relate to things in Schedule 8B.

Information Requirements for Controlled Substances and Controlled Things

Clauses 18 to 27 of the DMA Bill seek to amend **Part 5A** of the DMA. Part 5A of the DMA currently imposes information requirements for controlled substances (see Schedule 6). The DMA Bill seeks to apply the same information requirements to controlled things in Schedule 8B.

The regime established under Part 5A of the DMA, and Part 3, Schedules 6 and 8A of the DM Regulation enables the recording of particulars of persons and companies purchasing certain substances and things which can be used to manufacture illicit drugs. The recording of such information is intended to help authorities to trace the supply of chemicals and things in order to deter their purchase by illicit drug manufacturers.⁵⁹ All transactions regarding the supply of a controlled substance (and, pursuant to the Bill, a controlled thing) to another person in the ordinary course of the person's business are 'relevant transactions'. For instance, A and B are partners in a chain of pharmacies making cold and flu tablets to sell in the pharmacies by compounding ephedrine (a controlled substance) with other substances. A and B sell some left over ephedrine to a pharmaceutical research company and give the rest away. Both the sale and the giving away are 'relevant transactions'.⁶⁰

A person who supplies a controlled substance or thing under a relevant transaction must obtain from the recipient, as prescribed by Regulation, the documents and the evidence of the recipient's identity. Proposed amendments to s 6 of the DM Regulation by **cl 35** of the DMA Bill will ensure that before the substance or thing is supplied, the supplier has to obtain from the recipient an 'end user declaration'. The end user declaration will show information such as the recipient's name and address and various details about the supply and its intended use, as well as an official identification document containing a photograph of the recipient (e.g. driver's licence). These documents and any other documents about the supply must be kept as prescribed and the details of the relevant transactions have to be recorded in a register maintained by the supplier.⁶¹ The register can be inspected

⁵⁹ See the *Explanatory Notes* to the Drugs Misuse Amendment Bill 1995 (Qld), p 1.

⁶⁰ This example is a note to s 5 of the Regulation.

⁶¹ See also ss 7-9 of the DM Regulation concerning details that must be recorded in the register and the keeping of the register, invoices and other documents.

by an environmental health officer (appointed under s 137 of the *Health Act 1937*).⁶²

Failure to observe the foregoing requirements may result in a fine of up to \$1,500 for a first offence and \$3,000 for further offences.⁶³ It is also an offence, to which the same penalties apply, for an owner of a controlled substance or thing to fail to report its loss or theft (s 43F).

The *Explanatory Notes* to the DMA Bill (p 4) indicate that it is general practice for the industry manufacturing and selling controlled substances set out under Schedule 6 to provide copies of the transactions and identification documentation to the Queensland Police Service so that the relevant documentation is available at a central location. The DMA Bill will formalise the practice with the **proposed new s 43D(1)(d)** to provide that the supplier of the substance or thing must give the copies of the transactions and identification documentation to the commissioner of the police service (**cl 22**).⁶⁴ A **proposed new s 6A** of the DM Regulation (see **cl 36**) will provide that as soon as practicable after the end user declaration is obtained from the recipient, the supplier must give a copy to the commissioner.

As will be seen below, unlawful possession, supply or production of controlled substances (at or above the gross weight specified in Schedule 8A) or things listed in Schedule 8B constitute an offence.

Sales of Pseudoephedrine Medication

As part of a Commonwealth Government initiative to prevent the diversion of chemicals used to make illicit synthetic drugs, cold and flu tablets containing pseudoephedrine can only be sold by a pharmacist and must be kept out of public reach. Pseudoephedrine is a popular chemical used as a precursor for illicit drugs.⁶⁵

⁶² DMA, s 43I. The officer also has power to seize evidence and do other things while lawfully on the premises of the supplier pursuant to ss 43J-43Q.

⁶³ See DMA, ss 43C-43E. See also s 43F re employee's liability to comply with information requirements.

⁶⁴ Note also **cl 27** inserting a **proposed new s 43U** to impose limits upon the disclosure and use of information obtained under s 43D and provide for situations in which disclosure will not constitute an offence.

⁶⁵ Australian Government, National Drug Strategy, Minister Council on Drug Strategy, *National Leadership Forum on Ice – Compendium of Jurisdictional Achievements*, <http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/mcdfs-16may07-communicue-attachment-6>.

From 1 January 2006, tighter controls on pseudoephedrine medications came into effect in Queensland as a result of changes to the *Health (Drugs and Poisons) Regulation 1996* to reflect the stricter national restrictions. Pursuant to the amended Regulation, medications containing pseudoephedrine are ‘pharmacist only’ Schedule 3 medicines meaning that pharmacists cannot sell a pseudoephedrine medication unless satisfied that the customer has a genuine, therapeutic need for it. Further, pharmacists are able to ask for identification from customers they do not know, record details about each sale of these medications and the purchaser’s name and address. Upon the new laws coming into effect, the Queensland Minister for Health said that the diversion of pseudoephedrine medications for use as a precursor to manufacture methamphetamine was an issue of grave concern and that more stringent controls at the point of sale were necessary to combat the manufacture of illicit drugs.⁶⁶

Since 1 April 2006, customers wanting to buy cold and flu tablets and other medications containing high concentrations of pseudoephedrine must have a prescription for those medications. They are available over the counter only if the total amount of pseudoephedrine in the packet is less than 720 mg in solid form (such as capsules) or 800 mg in liquid form (such as nasal decongestants). These laws reflect nationwide controls applying to all pharmacies across the country.⁶⁷

3.2 OFFENCES

The main **offence** provisions listed in Part 2 of the DMA and the associated penalties are –⁶⁸

- Carrying on the business of unlawfully **trafficking** in dangerous drugs (s 5).
The maximum penalties are:
 - 25 years for a Schedule 1 drug;
 - 20 years for a Schedule 2 drug;
 - 5 years for a Schedule 2A drug (as currently provided).

⁶⁶ See Hon Stephen Robertson MP, Minister for Health, ‘Tighter controls on pseudoephedrine medications from 1 January’, *Queensland Media Statement*, 26 December 2005.

⁶⁷ NDS, *National Leadership Forum on Ice – Compendium of Jurisdictional Achievements*; Hon Stephen Robertson MP, Minister for Health, ‘Further tightening of controls for pseudoephedrine medications’, *Queensland Media Statement*, 31 March 2006.

⁶⁸ Please note that pursuant to amendments sought by the DMA Bill, the references to Schedule 2A dangerous drugs and penalties applying thereto will no longer be relevant and the applicable penalties will be those relating to offences involving Schedule 2 dangerous drugs.

- Unlawfully **supplying** a dangerous drug to another (s 6). The maximum penalties are:
 - 20 years for a Schedule 1 drug but 25 years where there was an ‘aggravated supply’ of the drug. An ‘aggravated supply’ is defined in s 6(2) as occurring where the drug is supplied to a minor or to an intellectually impaired person, or to a person within an educational institution or correctional facility, or where the person does not know they are being supplied with the drug;
 - 15 years for a Schedule 2 drug and 20 years where there was an aggravated supply;
 - 5 years for a Schedule 2A drug (as currently provided).⁶⁹
- Unlawfully **producing** a dangerous drug (s 8).⁷⁰ The maximum penalties are:
 - 25 years for a Schedule 1 drug where the quantity is of, or exceeds, that quantity specified in Schedule 4;
 - 20 years for a Schedule 1 drug where the quantity is of, or exceeds, that specified in Schedule 3 but less than that specified in Schedule 4 and the person convicted satisfies the judge that he or she is a drug dependent person as defined in s 4 of the DMA. However, the maximum penalty will be 25 years if the convicted person cannot so satisfy the judge;
 - 20 years in any other case involving a Schedule 1 drug;
 - 15 years for a Schedule 2 drug rising to up to 20 years where the quantity is of, or exceeds, that quantity specified in Schedule 3;
 - 5 years for a drug listed in Schedule 2A (as currently provided).
- Unlawfully **possessing** a dangerous drug (s 9). The maximum penalties are:
 - 25 years for a Schedule 1 drug where the quantity is of, or exceeds, that quantity specified in Schedule 4;
 - 20 years where the quantity is of, or exceeds, that specified in Schedule 3 but is less than that quantity specified in Schedule 4 and the person convicted satisfies the judge that he or she is drug dependent. However, the maximum penalty increases to 25 years if the person cannot so satisfy the judge;

⁶⁹ Penalties also apply to the offence of receiving or possessing property obtained from trafficking or supplying (i.e. ss 5 and 6 offences): s 7 – up to 20 years for drugs in Schedules 1 or 2 and 5 years for drugs in Schedule 2A.

⁷⁰ Section 8A creates an offence for unlawfully publishing or possessing instructions for producing a dangerous drug and penalties apply ranging from a maximum 2 years gaol for Schedule 2A drugs (to be removed by the DMA Bill) to 25 years for Schedule 1 drugs. A defence applies if instructions are for producing cannabis as a commercial fibre or seed crop for a purpose authorised under Part 5B of the DMA.

- 20 years for a Schedule 2 drug where the quantity is of, or exceeds, that quantity listed in Schedule 3;
- 15 years in any other case for a Schedule 1 or 2 drug and 2 years for a Schedule 2A drug (as currently provided).⁷¹
- Unlawfully **possessing a relevant substance or thing** attracts a maximum penalty of 15 years imprisonment (s 9A). A ‘relevant substance or thing’ is basically a substance that is, or contains,⁷² a controlled substance listed in Schedule 6 of the DM Regulation⁷³ and the gross weight is of, or exceeds, that specified in Schedule 8A of the DM Regulation. It also encompasses a thing specified in Schedule 8B of the DM Regulation.⁷⁴

Clause 13 of the DMA Bill inserts new offences into the DMA as proposed new ss 9B and 9C. **Section 9B** seeks to create a new offence for a person to unlawfully **supply a relevant substance or thing**, as defined under s 9A(2), to another person for use in connection with the commission of a crime under s 8 (i.e. production of a dangerous drug). The maximum penalty is 15 years imprisonment. **Section 9C** aims to make it a crime to unlawfully **produce a relevant substance or thing** for use in the connection with the commission of a crime under s 8 (i.e. the production of a dangerous drug). Again, the maximum penalty is 15 years imprisonment.

It should be noted that amendments to the offence provisions in ss 5, 6, 7, 8, 8A, 9, 10, 11 of the DMA are proposed by **cls 7-12, 14 and 15** of the DMA Bill to omit references to Schedule 2A of the DM Regulation as the offences and penalties involving Schedule 2A drugs will no longer apply. The penalties will be those pertaining to Schedule 2 drugs.

Other offences, punishable by up to 2 years in gaol, contained in s 10 relate to possessing things⁷⁵ used in connection with the administration, consumption or smoking of a dangerous drug; supplying a hypodermic syringe or needle for use in connection with the administration of a dangerous drug (but this does not apply to medical practitioners, pharmacists, or authorised persons); and possessing a hypodermic syringe or needle and failing to use all reasonable care and taking all reasonable precautions so as to avoid danger to life, safety or health of another.

⁷¹ Section 10 applies to possessing anything for use in connection with the commission of a Part 2 drug offence – up to 15 years for a Schedule 1 or 2 drug and 2 years for a Schedule 2A drug.

⁷² Or substances that together are, or contain, a controlled substance and the total gross weight is of, or exceeds, that specified in Schedule 8A of the DM Regulation.

⁷³ See full definition of ‘controlled substance’ in s 4 of the DMA.

⁷⁴ Schedule 8B of the Regulation was considered earlier in relation to ‘controlled things’.

⁷⁵ Other than a hypodermic syringe or needle.

Failing to properly dispose of a hypodermic syringe or needle is also an offence (the DM Regulation, in s 3, sets out the prescribed disposal procedures).⁷⁶

Pursuant to s 13 of the DMA, some offences can be dealt with **summarily**. One example is for those arising under ss 6, 8, 9, 9A, 10(1), 11 or 12 and for which a penalty of up to 15 years imprisonment applies. The maximum penalty that will apply on summary conviction is 2 years in gaol. If the magistrate forms an opinion that the matter should be tried on an indictment, the magistrate will abstain from determining the matter summarily and proceed with a view to committal (s 118(4)). **Clause 16** of the DMA Bill amends s 13 to allow the new ss 9B and 9C offences to be dealt with summarily.

3.3 DEFENCE OF SUPPLY OF A SMALL QUANTITY OF PRESCRIBED DRUG

Section 124 of the DMA currently provides that a person is not criminally responsible for the offence of unlawfully supplying a dangerous drug if it is a drug specified in **Schedule 5** of the DM Regulation (which includes dangerous drugs such as Diazepam) and four conditions apply. Those provisos are that the Schedule 5 drug was prescribed for the person by a medical practitioner for a condition suffered by the person; and it was given by the person to another person whom the person reasonably believed to be suffering from the same or similar condition; and the quantity given was no greater than a single dosage; and it was immediately consumed in the person's presence. Further, if the same conditions apply, the person to whom the Schedule 5 drug is given will not be guilty of possession of a dangerous drug.

Thus, as stated in the *Explanatory Notes* to the DMA Bill (p 4), s 124 recognises that there may be situations when someone will give a small amount of prescription medication to a family member, friend or neighbour who is thought to be suffering from the same sort of condition and provides a defence to a charge of supplying a Schedule 5 dangerous drug as well as a defence to a charge of possession to the person who receives the drug.

The DMA Bill (**cl 28**) seeks to amend s 124 of the DMA by inserting a **proposed new s 124(1A)** to provide that the defence to unlawful supply will not apply if the person has relied on the defence in relation to a previous charge of unlawful supply and the prosecution proves that the drug given under the current charge was the same drug and the recipient was the same person to whom the drug was given under the previous charge. A **proposed new s 124(2A)** sets the same limitations

⁷⁶ Other offences in Part 2 are possession of suspected property or proceeds relating to a drug offence (s 10A); possession of a combination of items listed in Schedule 8C of the Regulation (s 10B); permitting a place to be used for the commission of a drug offence (s 11).

upon the defence of unlawful possession. The *Explanatory Notes* (pp 6, 10) indicate that the amendments seek to ensure that the defence can only be used for a truly ‘one-off’ situation, as was always the intention of the provision. It will not offer protection each time a person gives the single dosage of medication to the same person or each time the recipient obtains it from the same person.

Schedule 5 of the DM Regulation is replaced by **cl 45** of the DMA Bill. The new Schedule 5 omits some existing drugs – such as pethidine and morphine – and includes many new dangerous drugs, including all 36 of the new benzodiazepines (which include drugs commonly known as Valium and Serapax) that will be added to Schedule 2. The inclusion of the new benzodiazepines in Schedule 2 was regarded as having the potential to make a person guilty of a drug offence if they give a family member a small amount of Valium without any criminal intent so these drugs will also be listed in Schedule 5 of the DM Regulation to enable the defence in s 124 to apply.⁷⁷

The consequence of the removal of some of the dangerous drugs from Schedule 5 is that persons supplying or possessing the drug will not be able to rely on the s 124 defence. However, as the *Explanatory Notes* state, it would not be likely that ordinary members of the community would be giving drugs like methadone, pethidine or morphine to somebody, even in small doses.⁷⁸

3.4 OTHER

As the DMA Bill does not impact on provisions in the DMA relating to official or lawful possession of, and dealing with, prohibited drugs and substances, these provisions will not be considered in this Research Brief.

Lawful commercial activity associated with the production of industrial cannabis sativa fibre and seed (industrial hemp), and the licensing regime is governed by Part 5B of the DMA and was covered in an earlier Library Research Publication.⁷⁹

⁷⁷ *Explanatory Notes*, pp 7, 13.

⁷⁸ *Explanatory Notes*, pp 7, 12-13

⁷⁹ W Jarred, ‘Drugs Misuse Amendment Bill 2002’, *Research Brief 2002/20*, Queensland Parliamentary Library, June 2002, <http://www.parliament.qld.gov.au/view/publications/documents/research/ResearchBriefs/2002/2002020.pdf>

RECENT QPL RESEARCH PUBLICATIONS 2008

2008/01	<i>Wine Industry Amendment Bill 2007 (Qld)</i>	Feb 2008
2008/02	<i>Prohibiting certain conduct of released child sex offenders: the Child Protection (Offender Prohibition Order) Bill 2007 (Qld)</i>	Feb 2008

Research Papers are available as PDF files:

- *to members of the general public, the full text of Research Briefs is now available on the parliamentary web site, URL, www.parliament.qld.gov.au/publications*
- www.parliament.qld.gov.au/Library/Query.exe – Library Research Briefs

A Subject Index to Research Publications is available at the following site:

www.parliament.qld.gov.au/view/publications/publications.asp?area=research&LIndex=4&SubArea=s_aborigines&Bindex=0&Barea=search

Orders may be sent to the Executive Assistant – Library: (07) 340 67275



This Publication:

RBR 2008/03 *Drugs Misuse Amendment Bill 2007 (Qld)* (QPL, February, 2008)

Related Publications:

LB 8/00 **Drugs Misuse Amendment Bill 2000 (QPL, June 2000)**

RBR 2002/20 **Drugs Misuse Amendment Bill 2002 (QPL, June 2002)**

RBR 2007/08 **'Ice Pipes': Prohibition on Sale, Supply and Display under the Health and Other Legislation Amendment Bill 2007 (Qld)** (QPL, March 2007)